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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LIDELFONSO CHAIDEZ, Defendant and Appellant.	B267623 (Los Angeles County Super. Ct. No. BA402561)

APPEAL from a judgment of the Superior Court of Los Angeles County, C. H. Rehm, Jr., Judge. Affirmed.

Sherman & Sherman and Victor Sherman for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Lidelfonso Chaidez (also known as Lidelfonso Avendano) appeals from a judgment of conviction following a plea of no contest to charges of conspiracy to commit possession of cocaine for sale (count 1),[1] and possession of over $100,000 in monetary proceeds from the sale of narcotics (count 2).[2] The appeal, filed pursuant to Penal Code section 1237.5, challenges the constitutionality of the *Hobbs*[3] procedure for sealing affidavits of probable cause for search warrants, as well as the denials of various pretrial motions. We find no basis for reversal, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2012, Costa Mesa Police Officer Mario Garcia applied for a warrant to search three residences. In the public portion of his application, Garcia stated he was an experienced narcotics trafficking investigator and had reason to believe the residences were being used for "illegal drug trafficking and/or money laundering activities . . . ." In a confidential affidavit, Garcia provided the probable cause information and requested that the affidavit be sealed in order to protect any confidential informants whose lives could be endangered if their identities were revealed.

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[1] Penal Code section 182, subdivision (a)(1) (conspiracy) and Health and Safety Code section 11370.4, subdivision (a)(3) (controlled substance in excess of 10 kilograms).

[2] Health and Safety Code section 11370.6, subdivision (a).

[3] *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*).

The magistrate (Judge Karen Ackerson-Brazille) sealed the confidential affidavit of probable cause, and issued the search warrant. In the sealing order, the magistrate found that Garcia had demonstrated an "overriding interest that overcomes the right of public access to the record; the overriding interest supports sealing the record; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest."

Pursuant to the warrant, police executed a search at the home of appellant on Courtland Avenue. Officers recovered two bags of currency (one containing $69,000 and the other containing $850,000), four firearms, and a money counting machine. No drugs were found in his home.

Twelve kilograms of cocaine were found in the attic of the Century Boulevard residence of appellant's daughter, son-in-law (codefendant Jorge Martinez), and granddaughter.

At the Paramount Boulevard home of codefendant Javier Uriarte (also known as Javier Navidad), officers recovered four kilograms of cocaine, cash ($355,000 in a paper bag, $15,900 under a mattress, $2,000 inside a stuffed animal), pay/owe ledgers, suspected methamphetamine, a weighing scale, a money counting machine, and drug packaging materials.

Before the preliminary hearing, appellant moved to quash and traverse the search warrant, unseal the confidential affidavit of probable cause, and compel disclosure of any confidential informants.[4] In May of 2012, the court (Judge Edmund W. Clark,

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[4] The record does not contain the moving papers filed by appellant.

Department 37) unsealed a small portion of the confidential affidavit and denied the balance of the motion.

Two months later, a preliminary hearing was held for appellant and the codefendants. The lead investigator, Jack Poland, testified as to the surveillance operation that led him to conclude appellant was in charge of a drug trafficking operation in which his codefendants were active participants.[5] In response to a question regarding the information that triggered the police investigation, Poland asserted the official information and

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[5] Poland testified that during the surveillance operation, appellant was seen driving a counter-surveillance vehicle, while his son-in-law, codefendant Martinez, switched vehicles in a manner consistent with narcotics trafficking. The men were seen moving containers (a cardboard box and a gift bag) commonly used to transport narcotics.

Investigator Mangarin testified that Martinez waived his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436, 467) following the search of his home and admitted selling cocaine.

Sergeant John Olea testified that Navidad also waived his rights following the search of his home and admitted being paid $5,000 per month to run a narcotics "stash house."

confidential informer privileges. (Evid. Code, §§ 1040, 1041.)[6] The magistrate (Judge Michael Pastor, Department 51) examined

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[6] Evidence Code section 1040 provides in relevant part:

"(a) As used in this section, 'official information' means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

"(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply:

"(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.

"(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered."

Evidence Code section 1041 provides in relevant part:

"(a) Except as provided in this section, a public entity has a privilege to refuse to disclose the identity of a person who has furnished information as provided in subdivision (b) purporting to disclose a violation of a law of the United States or of this state or of a public entity in this state, and to prevent another from disclosing the person's identity, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply:

"(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.

Poland in chambers on the grounds for asserting the privileges. Upon resuming the proceeding, defense attorneys not privy to Poland's in camera testimony argued the privileges did not apply. Appellant's attorney, Victor Sherman, argued that codefendants had implicated themselves but not his client, and if police had information regarding any third parties who may have an ownership interest in the narcotics found in the homes of the codefendants, appellant was entitled to that potentially exculpatory information.[7]

"(2) Disclosure of the identity of the informer is against the public interest because the necessity for preserving the confidentiality of his or her identity outweighs the necessity for disclosure in the interest of justice. The privilege shall not be claimed under this paragraph if a person authorized to do so has consented that the identity of the informer be disclosed in the proceeding. In determining whether disclosure of the identity of the informer is against the public interest, the interest of the public entity as a party in the outcome of the proceeding shall not be considered.

"(b) The privilege described in this section applies only if the information is furnished in confidence by the informer to any of the following:

"(1) A law enforcement officer. . . . "

[7] Mr. Sherman argued that because the "*Hobbs* portion of the warrant was completely blank," he was "completely in the dark" as to what had triggered the surveillance operation. "We were given nothing in this case. I have no idea what led to the investigation. Clearly, something did. They didn't just show up on September the 4th in the City of Cudahy because they had nothing else to do that day. [¶] There is a lot of information that is being kept from the defense. That is for sure. Now, only you can tell us if that in any way could help since I can't really say

The court stated it was unaware of any information that would exonerate appellant or his codefendants. Upon balancing the necessity of preserving confidentiality against the right to disclosure of information that might lead to an effective defense, the court upheld the privileges asserted by Poland. The court found the necessity for preserving the confidentiality of the information clearly outweighed the need for disclosure of the information in the interest of justice, and its disclosure would be contrary to the public interest under Evidence Code section 1042.[8]

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since I don't know what it is. But I think the whole process denies the defendant, my client, of his Sixth Amendment right to effective assistance of counsel."

[8] Evidence Code section 1042 provides in relevant part:

"(a) Except where disclosure is forbidden by an act of the Congress of the United States, if a claim of privilege under this article by the state or a public entity in this state is sustained in a criminal proceeding, the presiding officer shall make such order or finding of fact adverse to the public entity bringing the proceeding as is required by law upon any issue in the proceeding to which the privileged information is material.

"(b) Notwithstanding subdivision (a), where a search is made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding is not required to reveal to the defendant official information or the identity of an informer in order to establish the legality of the search or the admissibility of any evidence obtained as a result of it.

"(c) Notwithstanding subdivision (a), in any preliminary hearing, criminal trial, or other criminal proceeding, any otherwise admissible evidence of information communicated to a peace officer by a confidential informant, who is not a material witness to the guilt or innocence of the accused of the offense

Appellant and his codefendants were held to answer. Following entry of his not guilty plea, appellant filed numerous motions, which we next discuss.

Discovery. Appellant sought the names and addresses of all informants and material witnesses whose testimony would be critical to his defense. He also requested impeachment information under *Brady v. Maryland* (1963) 373 U.S. 83.[9]

Quash and Traverse Search Warrant. Appellant moved to quash and traverse the search warrant on the ground that the public portion of the affidavit contained no facts and therefore failed to support a finding of probable cause. Appellant also requested the court to conduct an in camera hearing to determine whether it was feasible to unseal the confidential information without revealing the names of confidential informants, or whether the entire affidavit should be unsealed because, due to changed circumstances, the grounds for sealing the affidavit were no longer valid.

Material Witnesses. Appellant also sought disclosure of all confidential informants who qualified as material witnesses.

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charged, is admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed if the judge or magistrate is satisfied, based upon evidence produced in open court, out of the presence of the jury, that such information was received from a reliable informant and in his discretion does not require such disclosure."

[9] In response to the request for *Brady* information, the prosecution stated that it did not intend to call "any alleged informant as a witness in this case." *Brady* is not an issue on appeal.

(Evid. Code, § 1042, subd. (d).)[10] He requested that the affidavit of probable cause be unsealed to reveal the names of material witnesses.

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[10] Evidence Code section 1042, subdivision (d) provides:

"When, in any such criminal proceeding, a party demands disclosure of the identity of the informant on the ground the informant is a material witness on the issue of guilt, the court shall conduct a hearing at which all parties may present evidence on the issue of disclosure. Such hearing shall be conducted outside the presence of the jury, if any. During the hearing, if the privilege provided for in Section 1041 is claimed by a person authorized to do so or if a person who is authorized to claim such privilege refuses to answer any question on the ground that the answer would tend to disclose the identity of the informant, the prosecuting attorney may request that the court hold an in camera hearing. If such a request is made, the court shall hold such a hearing outside the presence of the defendant and his counsel. At the in camera hearing, the prosecution may offer evidence which would tend to disclose or which discloses the identity of the informant to aid the court in its determination whether there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial. A reporter shall be present at the in camera hearing. Any transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at the hearing, shall be ordered sealed by the court, and only a court may have access to its contents. The court shall not order disclosure, nor strike the testimony of the witness who invokes the privilege, nor dismiss the criminal proceeding, if the party offering the witness refuses to disclose the identity of the informant, unless, based upon the evidence presented at the hearing held in the presence of the defendant and his counsel and the evidence presented at the in camera hearing, the court concludes that there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial."

Discriminatory Enforcement. Appellant moved for dismissal based on discriminatory enforcement. He argued that courts routinely seal affidavits of probable cause for search warrants without fully complying with the protections and procedures enumerated in *Hobbs*. Based on a declaration by his attorney,[11] appellant argued it was "common practice for Los Angeles County judges to authorize requests to seal the probable cause affidavit without a thorough examination, [and that] Judge Ackerson-Brazille likely simply read the police officer's probable cause affidavit and signed it without following the *Hobbs* procedures."

Discovery. Appellant subpoenaed documents from the district attorney relevant to his theory that affidavits of probable cause were routinely sealed in large-scale narcotics cases against

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[11] In his February 18, 2013 declaration, attorney Victor Sherman stated in relevant part that, "over the past 20 years, it has been my experience that prosecutors have been more and more relying upon the *Hobbs* decision to seal more and more of the probable cause portions in search warrant affidavits, mainly in major drug prosecutions. Specifically, the Los Angeles County District Attorney's Office, specially, the Major Drug Narcotics Unit, has routinely relied upon the *Hobbs* decision to conceal from defense attorneys the probable cause portion of search warrant affidavits. This process has prevented defense counsel from effectively representing their clients and testing the legal sufficiency of the probable cause portion of the search warrants. Defendant believes that this procedure is being utilized, not in conformity with the decision in H*obbs*, but as an effective way for the police to shield information that otherwise should be disclosed in order to 'protect informants and/or ongoing investigations' purely for their own interests, and not in conformity with the law."

Hispanic defendants. The district attorney moved to quash the subpoena.[12] Appellant then limited his discovery request to cases filed within a two-year period, in which affidavits of probable cause were ordered sealed under *Hobbs*.

In Camera Hearing. Appellant asked the court to personally interview the informant at a new in camera hearing. The district attorney argued appellant was not entitled to a new evidentiary hearing, and, in any event, a new hearing under *Hobbs* would simply confirm there was "a substantial basis for granting the search warrant and that adequate probable cause existed for its issuance, also that there are no false statements or material omissions."

On May 5, 2015, the superior court (Judge C. H. Rehm, Jr., Department 130) granted appellant's request for a new in camera hearing. The court did not specifically require the presence of the informant. Instead, it required testimony from any available law enforcement witness who could "discuss the change in circumstances, and whether or not there was information that

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[12] The district attorney moved to quash the subpoena as to the following items:

1. All cases, between September 1, 2007 and September 30, 2012, in which "law enforcement prepared a declaration and request for an order sealing the affidavit for probable cause and which the court authorized the affidavit sealed under" *Hobbs*.

2. The number of search warrants requested by law enforcement between September 1, 2007 and September 30, 2012, and of those search warrants, how many were requested to be sealed under the authority of *Hobbs*.

3. All law enforcement manuals, statistical analysis, data collection, policies and guidelines on utilizing *Hobbs* to obtain a warrant by using a sealed affidavit of probable cause.

was not available early on that is now available today." Appellant, the only defendant left in the case, was excluded from the in camera hearing at which Poland testified on the issue of changed circumstances.[13] At the conclusion of that hearing, the trial court ruled on all outstanding motions.

Trial Court Rulings. The court denied appellant's motion to quash and traverse the search warrant. It found the warrant had been properly issued, and nothing in the public or confidential information, including the information presented in Departments 37 and 51, indicated the existence of a deliberate falsehood or statement made in reckless disregard for the truth.

The motion to unseal all or portions of the affidavit of probable cause was denied. The court found the requirements for the privilege asserted by Poland under Evidence Code section 1042 continued to be met: "After having had the opportunity to consider those previous rulings and conduct its own in camera proceedings, the court finds that all of the risks and dangers in disclosing the portions previously sealed continue to exist at this time. Nothing in those sealed portions would exonerate this or any other defendant. Nothing appeared to be *Brady* material. Nothing demonstrates bad faith by the People in withholding the information. Nothing demonstrates that this information might lead to effective defense evidence that would make it reasonably probable that the defense would prevail on its motions to suppress, quash, or traverse the warrant. [¶] The necessity for preserving the confidentiality of this information substantially outweighs the necessity of disclosing that information in the

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[13] The codefendants entered into negotiated settlements and were sentenced on November 20, 2014.

interest of justice. Providing this information is at this time against public interest."

The court granted the prosecution's motion to quash the discovery subpoena, and denied the corresponding defense motion to compel discovery of other cases in which sealing orders had been issued. The court found no evidentiary support for the defense theory of a "selective or otherwise improper utilization of the *Hobbs* sealing procedures in this or any other case."

No Contest Plea. The court approved a negotiated settlement agreement pursuant to which appellant entered a plea of no contest. He received a 13-year sentence, with six years to be served in county jail, and the remainder to be suspended pending completion of seven years of mandatory supervision. The court issued a certificate of probable cause (§ 1237.5, subd. (a)), and this timely appeal followed.

DISCUSSION

There is a limited right to appeal from a judgment of conviction based on a no contest plea. Where the appeal is based on a certificate of probable cause, the only cognizable issues are those that show a "reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings." (§ 1237.5, subd. (a).) Beyond that, a defendant has a right to challenge the validity of a search or seizure, "provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence." (§ 1538.5, subd. (m).) As a corollary, where the claim is directed to the legality of the search, a defendant also may challenge the sealing of an affidavit of probable cause. (*Hobbs*, *supra*, 7 Cal.4th at p. 956.)

I

Appellant challenges the constitutionality of the *Hobbs* procedure for sealing affidavits of probable cause for search warrants. He argues that when an affidavit of probable cause is sealed, the accused is deprived of many constitutional rights, including the opportunity to be heard, the right to present a complete defense, the assistance of counsel, and a public trial.

Because we are bound by Supreme Court precedent (*Auto Equity Sales*, *Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455–456), we have no authority to overrule *Hobbs*. In any event, we do not agree with the contention that *Hobbs* is unconstitutional. On this point, we find the discussion in *People v. Galland* (2008) 45 Cal.4th 354 to be instructive. In that case, our Supreme Court reasoned as follows:

"Evidence Code section 1041 codifies the common law privilege against disclosure of the identity of a confidential informant. Evidence Code section 1042, subdivision (b) states, in particular, that disclosure of an informant's identity is not required to establish the legality of a search pursuant to a warrant. A corollary rule provides 'that "if disclosure of the contents of [the informant's] statement would tend to disclose the identity of the informer, the communication itself should come within the privilege."' (*Hobbs*, *supra*, 7 Cal.4th at pp. 961–962.) 'These codified privileges and decisional rules together comprise an exception to the statutory requirement that the contents of a search warrant, including any supporting affidavits setting forth the facts establishing probable cause for the search, become a public record once the warrant is executed.' (*Id*. at p. 962; cf. Pen. Code, § 1534, subd. (a).) Instead, a court may order any identifying details to be redacted or, as in this case, a court may

adopt 'the procedure of *sealing* portions of a search warrant affidavit that relate facts or information which, if disclosed in the public portion of the affidavit, will reveal or tend to reveal a confidential informant's identity.' (*Hobbs*, *supra*, at p. 963.)

"When a defendant seeks to quash or traverse a warrant where a portion of the supporting affidavit has been sealed, the relevant materials are to be made available for in camera review by the trial court. (*Hobbs*, *supra*, 7 Cal.4th at p. 963; see Evid. Code, § 915, subd. (b).) The court should determine first whether there are sufficient grounds for maintaining the confidentiality of the informant's identity. If so, the court should then determine whether the sealing of the affidavit (or any portion thereof) 'is necessary to avoid revealing the informant's identity.' (*Hobbs*, *supra*, 7 Cal.4th at p. 972.) Once the affidavit is found to have been properly sealed, the court should proceed to determine 'whether, under the "totality of the circumstances" presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was "a fair probability" that contraband or evidence of a crime would be found in the place searched pursuant to the warrant' (if the defendant has moved to quash the warrant) or 'whether the defendant's general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit, including any testimony offered at the in camera hearing' (if the defendant has moved to traverse the warrant). (*Id*. at pp. 974, 975.) The prosecutor may be present at the in camera hearing; the defendant and defense counsel are to be excluded unless the prosecutor elects to waive any objection to their presence. However, defense counsel should be afforded the opportunity to submit written questions, reasonable in length,

which shall be asked by the trial judge of any witness called to testify at the proceeding. (*Id*. at p. 973.)

"These procedures were 'designed to strike a fair balance between the People's privilege to refuse disclosure of a confidential informant's identity and the defendant's limited discovery rights in connection with any challenge to the search warrant's validity.' (*Hobbs*, *supra*, 7 Cal.4th at p. 964.) As we have noted, "'there is a fundamental difference between a trial to adjudicate guilt or innocence and a pretrial hearing to suppress evidence. The due process requirements for a hearing may be less elaborate and demanding than those at the trial proper.'" (*Id*. at p. 968.) Thus, "'[a] defendant's interest in availing himself of the exclusionary rule may, in exceptional circumstances, be subordinated to safety precautions necessary to encourage citizens to participate in law enforcement.'" (*Ibid*.) The 'strong and legitimate interest in protecting the informant's identity' (*People v. Luttenberger* (1990) 50 Cal.3d 1, 19) derives from the need to protect the safety of the informant and the informant's family, the need to preserve the informant's usefulness in current and future investigations, and the need to assure others who are contemplating cooperation with law enforcement of their safety as well. (*McCray v. Illinois* (1967) 386 U.S. 300, 308–309.)" (*People v. Galland*, *supra*, 45 Cal.4th at pp. 363–365.)

II

We apply the abuse of discretion standard in reviewing the denial of a motion to quash and traverse a search warrant. (See *Hobbs*, *supra*, 7 Cal.4th at p. 975.)

Based on our examination of the sealed affidavit of probable cause, we conclude the affiant showed to a fair degree of

probability that contraband or evidence of a crime would be found at the locations to be searched. Accordingly, the motion to quash the search warrant was properly denied. (See *Hobbs*, *supra*, 7 Cal.4th at p. 975.) Because we find no indication that the affidavit of probable cause contained material misrepresentations or omissions, the motion to traverse the search warrant also was properly denied. (See *ibid.*)

Appellant argues the informant should have been required to testify on the issue of changed circumstances at the May 5, 2015 in camera hearing.[14] He cites *People v. Seibel* (1990) 219 Cal.App.3d 1279, 1297–1298 for the proposition that a trial court has discretion to call and question an informant. We find no abuse of discretion.

As the court stated in *Davis v. Superior Court* (2010) 186 Cal.App.4th 1272, 1277–1278, testimony by a confidential informant "is not required at the in camera hearing. (*People v. Alderrou* (1987) 191 Cal.App.3d 1074, 1078–1079; accord, *People v. Fried* [(2010)] 214 Cal.App.3d 1309.) Instead, 'the Legislature clearly anticipated there would be situations where the informant's identity was not revealed to the judge but where others would supply information perhaps about his relationship to the defendant or to the criminal transaction or to the premises involved which, if known to the defendant, might only tend to suggest the informant's identity." (*Alderrou*, at p. 1079, fn. omitted.) Thus, in *Fried*, only a detective was present and testified about the confidential informant's relationship to the

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[14] Because this issue is relevant to the determination of the motion to quash and traverse the search warrant, we conclude it is cognizable on appeal under section 1538.5, subdivision (m). (See *Hobbs*, *supra*, 7 Cal.4th at p. 956.)

case. (*Fried*, at pp. 1312–1313.) *Fried* found that this procedure was proper and that the confidential informant need not be present at the in camera hearing."

III

Appellant challenges the denial of his motion to unseal all of part of the affidavit of probable case. As discussed, the issue is cognizable to the extent the claim is directed to the legality of the search. (*Hobbs*, *supra*, 7 Cal.4th at p. 956.) We find no error.

Citing *Roviaro v. United States* (1957) 353 U.S. 53, 60–61, appellant contends the privilege under Evidence Code section 1042 must yield when the disclosure of the identity of the informer or the contents of his or her communication would be relevant and helpful to the defense, or essential to a fair determination of the case. *Roviaro* is distinguishable. Because that case involved an appeal from a judgment of conviction following a bench trial, the Supreme Court did not consider the application of its holding to a defendant whose judgment of conviction is based on a plea of guilty or no contest.

It is well established under California law that a defendant may not admit that he possessed the contraband by pleading no contest and then appeal from "the judgment on the ground that some witness he was not permitted to discover might possibly have testified otherwise. [Citation.] The two positions are inconsistent." (*People v. Castro* (1974) 42 Cal.App.3d 960, 963.) Such "challenge would relate to defendant's guilt, rather than the legality of the search pursuant to warrant, and would have been waived by [his or] her plea of no contest. [Citations.]" (*Hobbs*, *supra*, 7 Cal.4th at pp. 955–956, citing *Castro*, at p. 963 and *People v. Duval* (1990) 221 Cal.App.3d 1105, 1114.)

IV

In order to establish a colorable claim of selective enforcement, a defendant must produce "some evidence that similarly situated defendants of other races could have been prosecuted, but were not, and this requirement is consistent with our equal protection case law. [Citations.]" (*United States v. Armstrong* (1996) 517 U.S. 456, 469.) The evidence in this case falls short of this standard.[15]

The trial court found the attorney declaration insufficient to establish a prima facie claim of selective enforcement against Latino defendants. Because there was no evidence of disparate treatment, the claim of discriminatory prosecution against Latino defendants was found to be speculative. We agree with the trial court's ruling.

Appellant argues that discovery on his claim of discriminatory enforcement may be obtained based on information and belief. The cases he cites, *Griffin v. Municipal Court* (1977) 20 Cal.3d 300 and *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, have been superseded. As explained in *People v. Superior Court* (*Baez*) (2000) 79 Cal.App.4th 1177, the former "'plausible justification' standard held sway in California until 1990. Penal Code section 1054, subdivision (e) took effect in 1990. This statute prohibits any discovery in a criminal case which is not expressly mandated by statute or required by the U.S. Constitution. (Pen. Code, § 1054, subd. (e); see also Pen. Code, § 1054.5, subd. (a).) There are no California statutes which

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[15] The issue is cognizable on appeal as part of a challenge to the legality of the proceedings within the meaning of section 1237.5. (See *People v. Moore* (2003) 105 Cal.App.4th 94, 100.)

expressly require the prosecution to disclose to the defense information which may support a discriminatory prosecution claim. (See Pen. Code, § 1054.1 [required disclosures to the defense].) Consequently, discovery of information pertinent to a discriminatory prosecution claim is no longer authorized in California unless such disclosure is required by the U.S. Constitution." (*Baez*, at p. 1188.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.